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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/329,487	06/10/1999	MITCHEL KRISS	29284/35302	8147

7590 05/16/2005

SCHIFF, HARDIN & WAITE  
Patent Department- 71st floor  
233 South Wacker Drive  
Chicago, IL 60606-6473

EXAMINER
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NORMAN, MARC E

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/329,487

Applicant(s)

KRISS ET AL.

Examiner

Marc E. Norman

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4,30,31,39-43,48 and 49 is/are rejected.  
7) ☒ Claim(s) 5-29,32-38 and 44-47 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 10 June 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

Art Unit: 3744

## **DETAILED ACTION**

### ***Response to Arguments***

In view of the appeal brief filed on 2 January 2004, PROSECUTION IS HEREBY REOPENED. A new examination on the merits is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3744

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 30, 31, 39-43, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egol in view of Yamamoto et al.

As per claims 1, 30, 39, and 43, Egol teaches reading panelist data (customer surveys at line 19) regarding purchases made by panelists from a supplier of interest (i.e., from the company itself (line 25)) and from other suppliers (i.e., from competitors), and determining relationships therebetween (via database tracking/analysis discussed at lines 22-35). Egol does not discuss the concept of reading overall customer data regarding purchases from the supplier of interest to estimate the purchases made by the overall customers from the other suppliers. However, this is simply a matter of linearly scaling up the data to the overall customer population. It is generally well known to take a sample and generalize, infer or extrapolate the response from the sample to the population as a whole (See for example paragraph 3 of the text section of Petzold or bottom paragraph of page 1 of Olin.). As has been discussed in the previous Office Action, Yamamoto teaches the basic concept of determining the purchases made by an overall customer population by scaling up data regarding purchases from a surveyed sample shop (value in parentheses at column 8, line 18) using a relationship between panelist data and overall customer data (ratio at column 8, lines 21-29). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply such scaling up of the data collected by Egol for the purpose understanding the purchasing trends of the overall customer base. Motivation for applying such scaling up to the Egol reference comes from the fact that it is

Art Unit: 3744

well known that businesses monitor their product mix and try to get their customers to buy more when they are in the store vs. what they buy from competitors (see for example “The where’s and why’s behind home and personal care purchases...” Drug Store News, 1998). It is clearly in a business’s interest to know what it’s customers are purchasing from its competitors and, given the data collected by Egol, such determination is a simple and obvious calculation using well-established basic scaling techniques.

As per claims 2 and 31, Egol further teaches aggregating data according to category (e.g., types of jewelry).

As per claim 3, Egol further teaches the aggregated data including the number of dollars spent from the supplier and from competitors (lines 22-26).

As per claim 4, Egol teaches collecting the amount spent (i.e., the share) by customers from the supplier and from competitors.

As per claims 40-42, 48, and 49, these claims are rejected for similar reasons as have already been addressed above regarding claims 1, 30, 39, and 43.

***Allowable Subject Matter***

Claims 5-29, 32-38, and 44-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As per claims 7, 8, 12, 13, 17-21, and 38, these claims are considered allowable for reasons already provided in previous Office Actions.

Art Unit: 3744

As per claims 5, 6, 9-11, 14-16, 22-29, 32-37, and 44-47, the Examiner accepts that it would not have been obvious to apply unrotated principal component factor analysis to the data collected by Egol. While Applicant admits that unrotated principal component factor analysis is old and well-known in the art (specification, page 13, lines 10-12), Applicant also provides specific ways and motivations in which technique is applied to the panelist and customer data (specification, page 12, line 12 – page 14, line 18). The Examiner concurs that it would not have been obvious to one of ordinary skill in the art to perform such analysis on the customer data collected by Egol.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The ACNielsen Consumer Insight Magazine article discusses ACNielsen's Homescan Cross Outlet\*Facts product for determining how much customers are buying from competitors.

The Cassano reference discusses use of the ACNielsen Homescan Consumer Panel service to track consumer sales.

The Parks reference presents research analyzing purchasing trends of cross-channel shoppers.

Mitchell et al. provides analysis of customer store loyalty perceptions.

Abe et al. provides an analysis of the use of panel purchase data in estimating store sales.

Olin and Petzold each discuss the concept of scaling sample data to an overall population.

Art Unit: 3744

Unruh discusses the concept of surveying customers for the purpose of understanding lost sales (e.g., sales that go to one's competitors).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 571-272-4808. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**MARC NORMAN  
PRIMARY EXAMINER**